

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Utility Construction Company, Inc.) ASBCA No. 57224
)
Under Contract No. W912PL-07-D-0044)

APPEARANCE FOR THE APPELLANT: Cynthia Malyszek, Esq.
Malyszek & Malyszek
Westlake Village, CA

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.
Engineer Chief Trial Attorney
John F. Bazan, Esq.
Engineer Trial Attorney
U.S. Army Engineer District, Los Angeles

OPINION BY ADMINISTRATIVE JUDGE STEMLER

This matter comes before the Board on the government's Motion to Dismiss for Lack of Jurisdiction, alleging that appellant's claim did not state a sum certain.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

1. On 29 September 2009, U.S. Army Corps of Engineers, Los Angeles District, awarded the captioned contract to Utility Construction Company, Inc. (UCCI) for a water treatment facility in Phoenix, Arizona (compl. and answer ¶ 2).
2. By date of 4 January 2010, UCCI submitted a certified claim. At the conclusion of the 26-page claim, the following chart appeared:

	Rates/Notes		SubTotals	TOTAL
Hunter Original Contract Amount			\$ 162,400.00	
Hunter Fee	(December to Now)		\$ 171,320.00	
UCC Project Manager	(September to Now)		\$ 46,618.00	
Dust Control	(Sept - March)		\$ 50,193.00	
Consultant Fee			\$ 6,850.00	
Additional Money for As-Builts			\$ 11,149.00	
Office, Generator, J-John, Trash, Superintendent Truck	(Sept - March)		\$ 33,875.00	
UCC Time for Claim	(to Today)		\$ 12,149.00	
Sub Total			\$ 494,554.00	
Overhead	14.80%		\$ 73,193.99	
Fee	10.00%		\$ 56,774.80	
Tax & Bond	6.50%		\$ 40,593.98	
Total Impact Costs				\$ 665,116.77
Delay & Disruption Costs				\$ 689,359.25
Actual			\$ 21,432.50	
Estimate to Complete			\$ 42,775.00	
Counseling Fees				\$ 64,207.50
Claim Total				\$ 1,418,683.52

(R4, tab 1 at Bates 28)

3. By Notice of Appeal dated 5 May 2010, appellant filed an appeal from a deemed denial of its 4 January 2010 claim.

CONTENTIONS OF THE PARTIES

The government filed the instant motion, seeking a dismissal for lack of jurisdiction, alleging that appellant's claim did not state a sum certain. The government's position is that while the amount being demanded by appellant is stated in a sum certain (\$1,418,683.52), the government is unable to ascertain how appellant arrived at the delay and disruption portion of the claim (\$689,359.25) (motion *passim*; reply in support of motion to dismiss, *passim*).

Appellant's position is that its claim stated a sum certain and that is all that is required.

DECISION

FAR 2.101 states in relevant part:

Claim means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contracts terms, or other relief arising under or relating to the contract.

UCCI's claim meets the requirements relating to sum certain contained in FAR 2.101 and a contractor's failure to provide the contracting officer with sufficient detail in the claim so that the contracting officer can ascertain exactly how the sum certain was arrived at is not necessary for this Board to have jurisdiction over an appeal. *H.L. Smith, Inc. v. Dalton*, 49 F.3d 1563 (Fed. Cir. 1995).

CONCLUSION

The motion is denied.

Dated: 27 October 2010

MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur

I concur

EUNICE W. THOMAS
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

MONROE E. FREEMAN, JR
Administrative Judge
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 57224, Appeal of Utility Construction Company, Inc., rendered in conformance with the Board's Charter.

Dated:

CATHERINE A. STANTON
Recorder, Armed Services
Board of Contract Appeals